IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(C).No. 23277 of 2007(U)

---

AGAINST THE ORDER DATED 24/07/2007 IN IA 1721/2007 IN OS.206/1996 of ADDL.SUB COURT, PALAKKAD

.....

PETITIONER:

---

SINGARAVELU KOUNDER,
S/O.ANDIYAPPA KOUNDER,
MACHINAIKKANPALAYAM, POOCHANARI,
POLLACHI TALUK, TAMIL NADU.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS:

---

1. SULAIMAN, S/O.HANEEFA RAWTHER,
SARALAPATHY MOOLATHARA VILLAGE,
CHITTUR TALUK, PALAKKAD DIST.

2. KAMARUNNEESA, W/O.SULAIMAN, -DO- DO-

BY ADV. SRI.KODOTH SREEDHARAN (FOR R1 & R2)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JP

WP(C) NO.23277/2007

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE COMMON JUDGMENT DATED 15.3.2007 PASSED IN AS NO.422/1998 (A.SS.NO.341, 346 & 422 OF 1998) ON THE FILE OF THIS HON'BLE COURT.

EXT. P2: COPY OF THE COMMISSION REPORT DATED 5.6.2007 SUBMITTED IN OS NO.210/1996 ON THE FILE OF SUBORDINATE JUDGE'S COURT, PALAKKAD.

EXT. P3: COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER HEREIN TO EXT. P2:

EXT. P4: COPY OF THE OBJECTION SUBMITTED BY THE RESPONDENTS HEREIN TO EXT. P2.

EXT. P5: COPY OF I.A. NO.1721/2007 ON THE FILE OF SUBORDINATE JUDGE'S COURT, PALAKKAD.

EXT. P6: COPY OF OBJECTION TO EXT. P5 FILED BY THE RESPONDENTS HEREIN.

EXT. P7: COPY OF THE ORDER DATED 24.7.2007 PASSED IN IA NO.1721/2007 IN OS NO.206/1996 ON THE FILE OF SUBORDINATE JUDGE'S COURT, PALAKKAD.

/TRUE COPY/

P.A. TO JUDGE

JP

**M.N.KRISHNAN, J**

==========

**W.P.(C) No. 23277 OF 2007**

==========

**Dated this the 7th day of September 2007**

**JUDGMENT**

This writ petition is preferred against the order of the Addl.Sub Court, Palakkad in I.A.No.1721 of 2007 inO.S.No.206 of 1996. The brief facts would reveal that a suit for specific performance was filed by the petitioner in O.S.No.206 of 1996 and in turn defendants in the case filed a suit for recovery of possession of the property from the plaintiff. When the matter reached before this court in first appeal, this court declined the relief of specific performance to the writ petitioner, but granted a decree for return of the amount and also found that in equity, he is entitled to get the value of improvements made by him in the property. For the said purpose, this court remanded the matter and directed to appoint an experienced Commissioner. One Advocate Sri.Sudheer was appointed as the Commissioner and he has submitted his report, a copy of which is produced as Ext.P2. Both sides filed objection to the Commissioner's report and thereafter the present writ petitioner moved I.A.No.1721/2007 to set aside the Commissioner's report. The court did not find in favour of the petitioner and therefore dismissed the

application. It has been brought to my notice by the learned counsel for the petitioner that the application for setting aside the Commissioner's report was filed on 20.7.2007 and the objection was filed on 23.7.2007 and the court pronounced the order on 24.7.2007. According to him, in a case of this nature, the court should have given time to adduce evidence in support of his contention for setting aside the commissioner's report. There appears to be considerable force in the said submission. I am informed thereafter that the parties have adduced evidence in support of their contentions. Since I feel that the court should have granted some time to adduce evidence in the petition for setting aside the Commissioner's report, I direct the learned Sub Judge to permit the parties to adduce evidence in support of their contentions in the main matter itself and when the court is convinced by evidence that the Commissioner's report is either wrong or inadequate, the court shall not by virtue of the order in I.A.No.1721/2007 withhold from its power to issue a fresh commission in case of necessity or to remit the Commissioner's report for further details. If the parties want additional evidence at this stage even in support of their respective contentions, the Sub Judge shall permit them to produce documents and adduce evidence as may be necessary in support of their plea. The learned Sub Judge shall not be influenced by the observations made by him in the order whereby he has

rejected the application for remitting the Commissioner's report for the solitary reason that he did not have the real materials or evidence before him at that stage to decide the matter. Thereafter the court shall dispose of the matter in accordance with law. If circumstances so warrant, the Sub Judge shall make necessary report to the High Court for extension of time.

**M.N.KRISHNAN, JUDGE**

**Cdp/-**